

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

January 31, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:34 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Carla Blanton; Mike Cravens; Karen Mundy; Mike Owens, Chair; Carolyn Plumlee; Lynn Roche-Phillips; and Bill Wilson. Absent were Eunice Beatty, Patrick Brewer, and Frank Penn.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Tim Queary, Urban Forester; and Jeff Neal, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve the minutes of the December 13, 2012, Planning Commission meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **BOAR 2013-1: WILLIAM KEVIN MURPHY** – an appeal of the Board of Architectural Review's issuance of a Certificate of Appropriateness on an adjoining property at 137 W. Bell Court. (Council District 3).

Petitioner Comments: Kevin Murphy, petitioner, stated that he would like to request postponement of this item.

Chairman Question: Mr. Owens asked if Mr. Murphy had a preference with regard to which meeting date would be best. Mr. Murphy responded that a one-month postponement would be sufficient. Mr. Sallee noted that the date for that meeting would be February 28th.

Opposition: Richard Murphy, attorney, was present representing the owner of the subject property. He said that his client was not yet present, since this item would typically have been considered much later in the meeting, but he would prefer to go forward with hearing this item at today's meeting. Mr. Murphy added that he will have two other presentations at the Commission's February 28th meeting, and, for that reason, he would also prefer that this case move forward today. He said that he would at least need to contact his client, before the Commission could consider postponing this request.

Petitioner Comments: Mr. Owens asked the appellant to explain his reason for requesting postponement, Mr. Kevin Murphy stated that he did not receive a copy of the staff report on this request until one day prior to this hearing. Upon reading that report, he learned that there were important items of evidence that were cited as reasons for the staff's disapproval recommendation, which he was told in October, following the submission of an Open Records Request to the Division of Historic Preservation, did not exist. Mr. Murphy said that, if the Commission will grant his request for postponement, it could ultimately result in him withdrawing this appeal, after he has an opportunity to review the documents with his legal counsel.

Chairman Questions: Mr. Owens asked the staff why this information was so late in being brought forward. Ms. Rackers answered that the staff was not aware of the existence of these items until late in the week prior to this hearing. The Historic Preservation staff discovered a tape from a 2001 hearing that they did not realize existed; and there were no minutes of that meeting. When a Certificate of Appropriateness was issued for the property following that hearing in 2001, there were no conditions listed on the Certificate of Appropriateness. The staff report was nearly completed when the staff learned about the existence of the additional evidence. Ms. Rackers noted that she was not sure if the information contained in that recording would make any difference with regard to the staff's recommendation for disapproval, but it was up to Mr. Murphy to choose whether or not to present that evidence.

Mr. Owens asked if Mr. Murphy was requesting postponement in order to have time to review the aforementioned audio tape. Mr. Murphy responded that he would like to have time to review the audio tape, as well as a landscape plan which was approved by the Historic Preservation staff.

Mr. Richard Murphy stated that this appeal is for the 2012 action of the BOAR, not the 2001 action to which Mr. Kevin Murphy referred. He asked the Chair for some time in which to contact his client and confer with Mr. Murphy about the possible postponement.

After conferring with his client and the appellant, Mr. Richard Murphy stated that all the parties involved had agreed to a two-week postponement of this item. He noted for the record that there were two of his client's immediately adjacent neighbors in the audience in support of his client.

Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-0 (Beatty, Berkley, and Penn absent) to postpone BOAR 2013-1 to the February 14, 2013, Planning Commission meeting.

* - Denotes date by which Commission must either approve or disapprove request.

2. **KIRK & CAROL SNYDER ZONING MAP AMENDMENT & MICHAEL GENTRY PROPERTY ZONING DEVELOPMENT PLAN**

- a. MAR 2013-1: KIRK & CAROL SNYDER (2/24/13)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Highway Service Business (B-3) zone, for 0.6138 net (0.9857 gross) acre, for property located at 3270 Richmond Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 9a) recommends Professional Services (PS) future land use for the subject property. The petitioner proposes to rezone the property to a B-3 zone, and to maintain the existing veterinary clinic and associated off-street parking on the site.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval** for the following reasons:

1. The requested Highway Service Business (B-3) zoning for the subject property will allow the property to develop for uses that are compatible in terms of use, intensity, and character with those on the adjoining properties. The veterinary clinic is a principal permitted use in the B-3 zone; thus, the property can continue to operate as a principal permitted use for the foreseeable future.
2. Recent changes in zoning and to the Richmond Road Traffic and Safety Ordinance, as well as the subsequent development of the area, constitute major changes of a physical and economic nature that have altered the basic character of the area that were not anticipated by the 2007 Comprehensive Plan. These have increased the permitted intensity of land use in this area over that recommended by the Plan.
3. This recommendation is made subject to approval and certification of ZDP 2013-9: Michael Gentry Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted with the following prohibited uses:

PROHIBITED USES:

- a. Adult entertainment establishments, adult bookstores, and adult video stores.
- b. Drive-through windows accessory to restaurants.
- c. Cocktail lounges not associated with restaurants.
- d. Nightclubs.
- e. Billboards.
- f. Cellular telephone towers.
- g. Amusement parks and fairgrounds.
- h. Outdoor loud speakers or music.
- i. Hotels and motels.

These use restrictions are necessary and appropriate for the subject property to lessen the intensity of the uses due to the size of the property and to its lack of direct access onto Richmond Road.

- b. ZDP 2013-9: MICHAEL GENTRY PROPERTY (2/24/13)* - located at 3270 Richmond Road.
(Foster-Roland)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote requested zone in site statistics.
7. Denote adjoining final record plat information.
8. Denote: This property shall be developed in accordance with the Richmond Road Access and Landscape Ordinance.
9. Remove extraneous soils information from plan.
10. Correct date in Commission's certification.
11. Denote name and address of developer and/or owners.
12. Denote topographical informational and source.
13. Denote construction access location.
14. Denote height of building in feet.

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Petitioner Representation: Christine Westover, attorney, was present representing the petitioner. She requested a one-month postponement of this item.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 8-0 (Beatty, Brewer, and Penn absent) to postpone MAR 2013-1 to the February 28, 2013, meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, January 10, 2013, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Eunice Beatty, Mike Owens, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Barbara Rackers, David Jarman and Denice Bullock, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Tracy Jones, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, January 10, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. GIVENS INVESTMENTS, LTD., ZONING MAP AMENDMENT & EASTLAND PARK, UNIT 1-L, ZONING DEVELOPMENT PLAN

- a. MARV 2012-18: GIVENS INVESTMENTS, LTD. (2/13/13)* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a High Density Apartment (R-4) zone, for 0.144 net (0.173 gross) acre, for property located at 1577 Martha Court (a portion of). A dimensional variance is also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends Greenspace/Open Space (GS) land use for the subject property. The applicant proposes developing 15 dwelling units in a multi-family residential structure, as an expansion of the adjoining apartment complex. A dimensional variance is also being requested with this zone change.

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The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The existing Two Family Residential (R-2) zoning is inappropriate and the proposed R-4 zoning is appropriate for several reasons:
 - a. The zoning on the subject parcel is split between R-2 and R-4 zoning, and the subject property is the only R-2 zoned property with frontage on Martha Court. Developing a duplex on the lot, while possible, would be out of character with the rest of the street.
 - b. The proposed R-4 zoning is more compatible with the existing land uses and zoning along Martha Court. All other properties along Martha Court, north of Eastland Parkway, are zoned R-4, and have been developed with multi-family residential land uses.
 - c. The western property boundary is adjacent to the Yates Elementary School property, and this area of the school property is being used as a large detention basin that is serving multiple properties. Because of the stormwater improvements, it is highly unlikely that this portion of the school lot will ever be sold for development.
 - d. The Northridge Apartments, located to the southeast, are also zoned R-4 and the proposed re-zoning will allow for the subject property to be integrated into the apartment complex on a unified development plan.
 - e. The proposed rezoning to R-4 will allow infill development of 15 dwelling units of affordable housing in the area, which is supported by the 2007 Comprehensive Plan goals of creating strategies that enable and encourage appropriate infill and redevelopment of established developments and neighborhoods (Goal #8) and providing housing opportunities to meet the needs of all citizens (Goal #13). This rezoning and development is also supported by the 2012 Comprehensive Plan Goals and Objectives of planning for safe, affordable, and accessible housing to meet the needs of older and/or disadvantaged residents (Theme A.1.c.), and identifying areas of opportunity for infill, redevelopment, and adaptive reuse that respect the area's context and design features whenever possible (Theme A.2.a.).
2. This recommendation is made subject to approval and certification of ZDP 2012-109: Eastland Park, Unit 1-L, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCE

1. Reduce the project exterior yard requirement for a Group Residential Project from twenty (20) feet to five (5) feet along the northwestern property line.

The Zoning Committee Recommended: **Approval of the requested variance**, for the reasons provided by staff.

The Staff Recommends: **Approval of the requested setback variance from 20 feet to 5 feet**, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, as this Group Residential Project will be immediately adjacent to the open space on the adjacent school property.
- b. Approval of the variance will not result in an unreasonable circumvention of the Zoning Ordinance. The applicant's proposal for a 15-unit apartment building will be comparable to other apartment buildings existing on Martha Court.
- c. The unique circumstance that applies to this property is the large overhead utility easement, which necessitates the relocation of this apartment building.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant (loss of units), an apartment building that would be atypical and out of character for this area, and would likely result in an incompatible development proposal.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant, but rather by the presence of a large utility easement on the subject property.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan; as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, and a building permit.

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- c. ZDP 2012-109: EASTLAND PARK, UNIT L (2/13/13)* - located at 1577 Martha Court.
(2020 Land Surveying)

The Subdivision Committee Recommended: Postponement. There were some questions whether the new development can meet the required off-street parking.

Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Addition of written scale.
9. Denote record plat designation.
10. Dimension walkways, parking and buildings.
11. Dimension access points.
12. Denote number of stories and height of building.
13. Correct note #1 in reference to Chapter 16 of the Code of Ordinances.
14. Discuss property boundary line conflict with buildings.
15. Discuss compliance with required parking.
16. Discuss possible need for height-to-yard variance.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property at the terminus of Martha Court, off of Eastland Parkway. She noted that the right-of-way shown on the zoning map for the subject property depicts a cul-de-sac at this location. However, the aerial photograph shows that the cul-de-sac was never constructed, because Martha Court stubs into and serves the Yates Elementary School property. The subject property is bounded to the north and northwest by R-2 zoning, for the school and duplexes along Hisle Way; Martha Court and Meade Court are developed with multi-family uses; and Cantrill Drive, to the rear of the subject property, contains single-family residences.

Displaying an aerial photograph of the subject property, Ms. Wade explained that the subject property is currently vacant. It was formerly part of the Yates Elementary School property, but it was subdivided several decades ago. There is an easement that crosses the property, which might be the reason for its current split zoning; the portion to the south/southeast is currently zoned R-4, and the northern portion is zoned R-2. There are several mature trees on the subject property, mostly near the existing easement. There are multiple apartment buildings along Martha Court, some of which, along the west side of the street, are part of the Northridge Apartment complex. She said that the petitioner is requesting the R-4 zone in order to add one more building to that apartment development, to include 15 dwelling units.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Greenspace/Open Space use for the subject property. Although the proposed R-4 zone is not in agreement with that recommendation, the staff agrees with the petitioner's assertion that the proposed R-4 zone is more appropriate than the existing R-2 zoning in this location, for the reasons as listed in the staff report and on the agenda. Ms. Wade added that, since there is a large stormwater detention area on the Yates property near the subject property, the staff believes that it is unlikely that that area will ever be developed. Therefore, including it in the Northridge Apartments development is appropriate. In addition, the petitioner noted in their justification that the Northridge Apartments include both low-income and elderly housing units, both of which are supported and encouraged by Goals 8 and 13 of the 2007 Comprehensive Plan, and Themes A.1.c and A.2.a of the 2012 Comprehensive Plan Goals & Objectives. Ms. Wade stated that the staff is recommending approval of this request, for those reasons.

Development Plan Presentation: Ms. Gallt presented the corollary preliminary development plan, noting that the Subdivision Committee originally recommended postponement of this plan due to concerns about the petitioner's ability to meet the parking requirements on the property. At that Subdivision Committee meeting, the petitioner submitted a revised plan, which the staff later reviewed. After reviewing the revised plan, the staff was now recommending approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.

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4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
- ~~6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.~~
- ~~6.7. Denote:~~ No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
- ~~8. Addition of written scale.~~
- ~~9. Denote record plat designation.~~
- ~~7.10. Dimension walkways, parking and buildings depths.~~
- ~~11. Dimension access points.~~
- ~~8.12. Denote number of stories and height of building.~~
- ~~13. Correct note #1 in reference to Chapter 16 of the Code of Ordinances.~~
- ~~14. Discuss property boundary line conflict with buildings.~~
- ~~15. Discuss compliance with required parking.~~
- ~~9.16. Discuss possible need for~~ Provided the Planning Commission grants the requested height-to-yard variance.
10. Clarify that elderly housing in each building are "elderly units" (rather than bedrooms).

Ms. Gallt stated that condition #10 refers to the need for the petitioner to specifically label the elderly units on the plan, rather than bedrooms.

Variance Presentation: Mr. Martin presented the variance report, using the rendered development plan to note the location of the proposed new building and associated parking. He said that the building is proposed to be 40' by 90' in size, and located near the zone line on the property. The petitioner is requesting a variance for the height-to-yard ratio due to the two existing utility easements on the property, one of which is 40' wide; and the other, which is 12' wide. Since the proposed building cannot encroach on either of those easements, a setback is required for each easement. In addition, a 20' exterior yard setback is required since the proposed building will be part of a Group Residential Project. The combination of those setbacks would only permit a building of 28' or less in width, which could compromise the economic feasibility of the development. Mr. Martin noted that the easements were platted in the 1960s, so the difficult situation on the property is not a situation of the applicant's creation. He said that the staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda, and subject to the four conditions as listed.

Petitioner Representation: Christine Westover, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, and she requested approval.

Zoning Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve MARV 2012-18, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve ZDP 2012-109, subject to the 10 conditions as listed in the revised staff recommendation.

Variance Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve the requested variance, for the reasons provided by staff, and subject to the four conditions as recommended by staff.

3. JULIE & ANTHONY CHILDRESS ZONING MAP AMENDMENT & JULIE & ANTHONY CHILDRESS PROEPRTY ZONING DEVELOPMENT PLAN

- a. MAR 2013-2: JULIE & ANTHONY CHILDRESS (2/24/13)* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Lexington Center Business (B-2B) zone, for 0.057 net (0.130 gross) acre, for property located at 430 West Maxwell Street.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 1) recommends a Commercial Residential Mixed Use (MU) land use for the subject property. The petitioner proposes a Lexington Center Business (B-2B) zone in order to re-use the existing structure for residential purposes, and construct an office/garage in a separate building on the same property.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Lexington Center Business (B-2B) zone is in agreement with the 2007 Comprehensive Plan and the Newtown Pike Extension Corridor Plan for the following reasons:
 - a. The property is recommended for a future Commercial Residential Mixed Use (MU) future land use (formerly Retail/Office Mixture), to include residential use.

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- b. The requested B-2B zone is one of several that can implement that future land use recommendation.
- c. The petitioner proposes a residential use along West Maxwell Street and an office use along Spring Street, all of which are permitted in the B-2B zone.
- 2. This recommendation is made subject to approval and certification of ZDP 2013-10: Julie & Anthony Childress Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited at this location via conditional zoning:
 - a. Cocktail lounges and nightclubs.
 - b. Automobile service stations and/or the sale of gasoline.
 - c. Establishments for the display, rental, repair and/or sale of automobiles, motorcycles, trucks, and boats.

These use restrictions are necessary and appropriate for the subject property to ensure that the proposed zoning will only allow for development that would be compatible with future redevelopment projects in the downtown area, and with uses recommended by the Comprehensive Plan.

- b. ZDP 2013-10: JULIE & ANTHONY CHILDRESS PROPERTY (2/24/13)* - located at 430 West Maxwell Street.
(James Black)

The Subdivision Committee Recommended: Postponement. There were some concerns about access to the proposed garage.

Should this plan be approved, the following conditions should be considered:

- 1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
- 4. Building Inspection's approval of landscaping and landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Addition of a graphic scale.
- 7. Addition of adjacent property information.
- 8. Addition of topographical contours and source information.
- 9. Denote building height in feet.
- 10. Addition of any proposed easements.
- 11. Discuss plan status.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property, directly across from the Rupp Arena High Street parking lot, at the southwest corner of Spring Street and West Maxwell Street. She stated that the petitioner is proposing to rezone the subject property to B-2B in order to bring the use of the property into conformity with the Zoning Ordinance, since the uses on the property have been non-conforming for some time. The first floor of the structure at this location has been used for retail use, and the second floor for residential use, in the past. The petitioner is proposing to use the entirety of the existing structure for residential use, and to construct a two-story garage with usable second-story space on the rear of the property, possibly for an office.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Commercial Residential Mixed-Use land use for the subject property, which was carried forward from the adopted Newtown Pike Extension Corridor Plan. The mixed-use land use category "encourages combinations of office and neighborhood retail, with residential above or adjacent to the office or retail use." The intent of the category is to encourage redevelopment by mixing uses and reducing parking requirements. Ms. Wade noted that the proposed B-2B zone meets those criteria, since it has no parking requirements. She said that, because the B-2B zone is one of several zoning categories that can implement this land use recommendation, the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Ms. Wade explained that the staff is also recommending that a few uses be prohibited on the subject property via conditional zoning restrictions, in order to be consistent with other recent zone changes in the vicinity of the property: 1) cocktail lounges and nightclubs; 2) automobile service stations and/or sale of gasoline; and 3) establishments for the display, rental, repair, or sale of automobiles, motorcycles, trucks and boats.

Commission Question: Mr. Owens asked, with regard to the proposed garage with office space above, if the Zoning Ordinance would permit a second dwelling unit above the garage. Ms. Wade answered that it would. She added that the Zoning Committee also recommended approval of this request.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting the location of the existing primary structure and proposed garage on the subject property. He said that the Subdivision Committee

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recommended postponement of this plan at their last meeting, primarily due to concerns about access to the garage and the possibility of cars backing out onto Spring Street. The staff has received communication from the Division of Traffic Engineering staff, noting that they had met with the petitioner and discussed some possible restrictions to the garage access.

Mr. Taylor stated that, based on the submission of a revised plan that addressed some of the concerns about the garage access, the staff has prepared the following revised recommendation for this zoning development plan:

The Staff Recommends: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Addition of a graphic scale.
7. Addition of adjacent property information.
8. Addition of topographical contours and source information.
9. Denote building height in feet.
10. Addition of any proposed easements.
11. ~~Discuss plan status~~ Denote: Garage parking for owner/resident only. A warning device will be incorporated into the garage opening to alert travelers, and mirrors installed to assist visibility.

Mr. Taylor said that the second sentence of the new condition #11 refers to a solution that the Division of Traffic Engineering had discussed with the petitioner, but then decided it might not be appropriate at this location. The staff is requesting, therefore, that that sentence be removed in order to give the petitioner and the Division of Traffic Engineering the flexibility to choose other options, which would be handled as part of Traffic Engineering's sign-off on the plan. Mr. Taylor stated that, with those changes, the staff is recommending approval of this plan.

Commission Question: Mr. Owens asked, with regard to condition #11, what other option might be used to improve the safety of the garage access. Mr. Taylor responded that the staff's last communication with Mr. Neal was just prior to this hearing, when he indicated his preference for the petitioner to have some flexibility in choosing a solution, in case a more appropriate option becomes available.

Petitioner Presentation: Jim Black, engineer, was present representing the petitioner. He stated, with regard to condition #11 for the development plan, that he had met with a representative of Traffic Engineering and reached a reasonable solution for the garage access issue. The garage geometry requires that the face of the structure would be located very close to the sidewalk, possibly as close as one foot away. Mr. Black proposed requirements that the doors of the garage be fully vertical, as opposed to the "swing-out" type, to avoid the door swinging out over the sidewalk; and that an audible device be installed, to sound whenever the garage doors open. Mr. Black opined that mirrors would likely not be effective in this situation, as drivers would be too far into the garage to see approaching traffic in the mirror.

Mr. Black stated that he was under the impression that the Division of Traffic Engineering was satisfied with the proposed solution, but he learned just prior to this meeting that they wanted to leave options open in case a more appropriate solution is found. He noted that the petitioner is willing to continue to work with Traffic Engineering to explore other options, if necessary.

Commission Question: Mr. Owens asked if an audible, beeping alarm would be a nuisance to the nearby residences, particularly late at night. Mr. Neal answered that he had suggested the placement of mirrors, since they are widely used in the community, particularly in the downtown area; but he does not believe there are many locations that use an audible alarm system to alert of exiting traffic. He noted that restricting use of the garage to owners and residents only should reduce the frequency of entering and existing traffic, and increase safety on the subject property.

Citizen Comments: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve MAR 2013-2, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve ZDP 2013-10, subject to the first ten conditions as listed in the revised staff recommendation, condition #11 deleting the sentence "A warning device will be incorporated into the garage opening to alert travelers, and mirrors installed to assist visibility."

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2012-9: AMENDMENTS TO ARTICLES 1, 8 & 12 FOR MODIFICATIONS TO THE B-1 ZONE** – petition for a Zoning Ordinance text amendment to Articles 1, 8, and 12 to make various modifications to the B-1 zone, including the addition of several new definitions.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Copies of the full proposed text are available upon request)*

Revised Staff Alternative Text:**8-16(c) Accessory Uses**

1. Parking areas or structures.
2. One (1) dwelling unit for owners, operators, or employees of a permitted use, provided that such dwelling unit shall be a part of the building and located above or to the rear of such permitted uses.
3. Warehousing, wholesaling, and storage, excluding outdoor storage; and provided that no building for such accessory use shall have openings other than stationary windows or solid pedestrian doors within one hundred (100) feet of any residential zone.
- ~~4. The rental of trucks (single rear axle - 28' maximum overall length); trailers, and related items in conjunction with the operation of an automobile service station, provided the service station abuts a state or federal highway and does not abut a residential zone. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Division of Building Inspection for the control of such activities and shall show the entire property, signs, parking and location of the proposed storage area.~~
- ~~4.5.~~ The sale of malt beverages, wine, or alcoholic beverages, when accessory to a restaurant permitted under Section 8-16(b)(3). Such accessory use shall not devote more than twenty-five percent (25%) of its public floor area exclusively primarily to the preparation and service of such beverages, nor provide any separate outside entrances or separate identification signs for those areas.
- ~~6. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein.~~
- ~~5.7.~~ Satellite dish antennas, as further regulated by Article 15-8.
- ~~6.8.~~ One (1) or two (2) pool or billiard tables within an establishment.
- ~~7. Sidewalk cafés, when accessory to any permitted restaurant.~~
- ~~8. Retail sale of liquid propane (limited to 20 lb. containers), when accessory to the retail sale of merchandise or an automobile service station permitted under Article 8-16(b).~~
9. Indoor live entertainment and/or dancing, when accessory to a restaurant, **brew-pub** or banquet facility; but only when located more than one hundred (100) feet from a residential zone.
- ~~10. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, when approved by the Planning Commission on a development plan.~~

8-16(d) Conditional Uses

1. Self-service car washes, provided that surface water from such establishments shall not drain onto adjacent property, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
2. Animal hospital or clinic, provided that all exterior walls are completely soundproofed, and further provided that animal pens shall be completely within the principal building and used for the medical treatment of small animals.
3. The rental of trucks (single rear axle - 28' maximum overall length); trailers and related items in conjunction with the operation of an automobile service station, provided that the service station abuts a state or federal highway ~~when abutting a residential zone~~. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Board of Adjustment for the continued control of such activity and shall show the entire property, buildings, signs, parking and location of the proposed storage area.
4. A restaurant or brew-pub, without live entertainment or dancing, which devotes more than twenty-five percent (25%) of the establishment's public floor area exclusively primarily to the preparation and service of malt beverages, wine or alcoholic beverages.
5. Outdoor live entertainment and/or dancing, cocktail lounges, ~~brew-pubs~~ or night clubs [unless prohibited under Sections 8-16(e)(14) and (15)]. Such uses shall be located at least one hundred (100) feet from any residential zone and shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
- ~~6. A combination business, office and residential project, provided the following conditions and requirements are met:~~
[including deletion of sub-sections a. – s. that follow]
- ~~6.7.~~ Upholstery shop.
- ~~7.8.~~ Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;

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- b. That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
- 8.9. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
- a. To check all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
- 9.10. ~~Assisted living facilities and~~ Rehabilitation homes, but only when located closer ~~more~~ than five hundred (500) feet from a residential zone.
10. Extended-stay hotels.
11. Parking lots, provided such uses conform to the conditions of Article 16.
12. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, except as accessory uses herein.

The Zoning Committee Recommended: **Approval, including the Staff Alternative Text**, for the reasons provided by staff.

The Staff Recommends: **Approval, including the Staff Alternative Text**, for the following reasons:

1. The text amendment will be in agreement with the Implementation Element and Table of the 2007 Comprehensive Plan, which identified the "neighborhood business zone rewrite" as a necessary task following the completion of the *Non-Residential Infill Study*. The Study suggested adjusting land uses permitted within the Neighborhood Business (B-1) zone and relaxing setbacks and height limitations.
2. The proposed amendment meets many of the recommendations of the *Non-Residential Infill Study*, and accomplishes other minor improvements to the B-1 zone to make it more compatible with residential neighborhoods.
3. The creation of a "form-based neighborhood business project" will provide added flexibility for redevelopment in the Infill and Redevelopment Area, and will provide for more compatible development with the existing character of an area.

Staff Presentation: Ms. Wade presented the staff report for this proposed text amendment, explaining that the impetus behind it came from the 2007 Comprehensive Plan Implementation chapter. She said that the first step in the process toward initiation of this request was the Non-Residential Infill Study; the staff then analyzed the data from that study and used it to make adjustments to the B-1 zone.

Ms. Wade stated that, based on the Non-Residential Infill Study, along with input from the Downtown Development Authority, the Infill & Redevelopment Steering Committee, and the Divisions of Building Inspection and Planning, the staff is proposing four types of changes to the text of the B-1 zone: 1) yard and height requirements; 2) off-street parking requirements; 3) special provisions; and 4) principal, accessory, and conditional uses.

With regard to the proposed changes to the height and yard requirements in the B-1 zone, Ms. Wade said that, currently, the height of a building is limited to 25 feet, unless it has a top floor with a residential use. In that case, the height can extend to 35 feet. The yard restrictions are currently set at 20-foot minimum front yards, with provisions in the defined Infill & Redevelopment Area to allow a property to match the front yards on either side of it. There are no current restrictions for side and rear yards, unless the property is located adjacent to a more restrictive zone. Using a rendered graphic on the overhead, Ms. Wade explained that, if a typical urban B-1 parcel was surrounded by R-1C zoning, it would be required to adhere to an eight-foot side yard and 10-foot rear yard, with a minimum landscape buffer of five feet wherever the residential and business zones were adjoining. In a rural B-1 zone surrounded by A-R zoning, 25-foot side and rear yards would be required, with a landscape buffer of 15 feet.

Ms. Wade stated that the Non-Residential Infill Study made some general statements about encouraging higher allowances for building height, even near single-family residential areas. In addition, the I/R study promoted increasing site coverage, which would require minimizing yard requirements as much as possible. Given that direction, the staff is suggesting two different types of changes with regard to height and yard requirements. The first proposed change would create a "build to" range in the B-1 zone, so that the setback would be between 10 and 20 feet for all buildings. The result of this amendment would be an increase in buildable area to the rear of a property, and the location of parking to the side or rear, with the structure pushed closer to the front of the lot. The staff also recommended increasing the maximum height to 35 feet for all B-1 zones, with no changes to the side or rear yard, open space, or lot coverage, which all currently have no limitations.

Ms. Wade stated, with regard to off-street parking requirements, that they are found in each zone. The I/R Study recommended a re-evaluation of current parking requirements, which the staff performed, using the American Planning Association standards for parking. The staff found that most of the uses were in line with the recommended parking standards,

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and needed only a few changes. The staff is recommending a reduction in parking for arcades; the addition of animal grooming facilities and mail service facilities as new uses, with parking standards for each; and the addition of clothing alterations, tailoring services, and tattoo parlors as new uses, to be grouped with shoe repair shops, which have a parking requirement of one space for every 200 square feet.

With regard to the proposed amendments to the special provisions section of the Zoning Ordinance, Ms. Wade said that the Non-Residential Infill Study suggested two major changes. She explained that, in many of the B-1 zones, there are uses that are out of scale with the surrounding neighborhood; there is an existing restriction to limit the structure size of a big-box store that sells grocery items. The staff is recommending that that limit be applied to any structure in the B-1 zone, which should address the scale issue that the I/R Study suggested be remedied by limiting uses in the B-1 zones. The second proposed change to the special provisions section would create a form-based neighborhood business project, which would allow a great deal of flexibility for developers and the Planning Commission to meet the needs of the community. A Form-Based Neighborhood Business Project would be required to be at least an acre in size; be approved by the Planning Commission; and have a Final Development Plan approved prior to the issuance of any building permit. The lot, yard, and height setbacks would also be flexible, based on the neighborhood setting and context. Each project would require the submission of an area character and context study, prepared by an architect or urban design professional, to include information documenting the architectural setting and character of the area, and how their project would be incorporated into the neighborhood. Those study submissions would also require the presentation of renderings or other graphic materials to the Planning Commission for their approval. Ms. Wade stated that the staff believes that a good existing example of this concept is the Chevy Chase Plaza, which respects the character of the neighborhood and is integrated into its existing fabric, although it does not meet the typical setbacks and other requirements of the B-1 zone.

Ms. Wade said, with regard to the proposed use changes, that this text amendment would add a few new uses; move some uses from conditional to principal; specifically name tattoo parlors, which have been considered as beauty shops; and make the Form-Based Neighborhood Business Project a principal use. With regard to accessory uses, the proposed text amendment would make sidewalk cafes and the retail sale of propane listed uses. For conditional uses, the staff is proposing to add extended-stay hotels and parking lots as conditional uses. Parking structures with a B-1 use on the first floor could be considered as a principal use, but such structures without 25% of the first floor dedicated to a B-1 use would become a conditional use. The staff is also proposing text to allow a drive-through facility as an accessory use when the Planning Commission approves it on a development plan, but a conditional use when not approved by the Commission. Ms. Wade explained that there are many existing banks with drive-through facilities that are zoned P-1, and each such facility requires the approval of the Board of Adjustment, so the same treatment of drive-throughs would apply in that zone as well.

Ms. Wade stated, with regard to the proposed deletions, that the staff is proposing to delete hospitals and combination business, office, and residential projects from the list of conditional uses. She noted that the combination business, office, and residential project concept has not been used since the development of Chevy Chase Plaza, and the staff believes that it is overly restrictive, since it is required to be at least 20 acres in size. In addition, indoor theaters would be limited in size to three screens or stages. Truck rentals would become a conditional use across the board, since the axle size of the truck is the current determining factor as to whether that use is conditional or accessory, and the staff believes that that restriction is awkward and difficult to apply.

Ms. Wade said that there are several additional changes proposed to Article 8, due to the "trickle-down" effect of making changes to the B-1 zone. In addition, the staff is proposing to add the following new definitions: animal grooming facility; mail service facility; tattoo parlor; primary entrance; cocktail lounge; and nightclub, and to add the Expansion Area zoning categories to the existing definition of "business zone," industrial zone," and "residential zone."

Ms. Wade stated that, since the proposed text amendment was first drafted a year ago, other text amendments have been approved that have affected the B-1 zone, one of which dealt with banquet facilities. The staff felt that one of the changes to the banquet facilities text, which refers to outdoor live entertainment, was still unclear; so they are proposing additional changes to clarify that language. In addition, they are proposing to add language to allow the Board of Adjustment to impose time restrictions on outdoor live entertainment venues in order to minimize nuisances to the surrounding neighborhoods.

Ms. Wade stated that the Zoning Committee recommended approval of this request at their meeting in August of 2012, but they also recommended a change to the text relating to miniature golf courses at the request of Richard Murphy, attorney. The staff had originally recommended removing "miniature golf course" from the B-1 zone and moving it to the B-3 zone, but the Zoning Committee recommended keeping the use in the B-1 zone. The staff made the necessary changes to the proposed text; but Mr. Murphy noted just prior to this hearing that the Zoning Committee recommended deleting the word "outdoor" from the section pertaining to miniature golf courses, so that one of his clients could construct a mixed, indoor/outdoor course. Ms. Wade noted that the staff is recommending that the Commission delete the word "outdoor" from the proposed text as included in their notebooks, per the Zoning Committee recommendation and make miniature golf courses a permitted use in the B-3 zone, where most other recreation and entertainment-type uses are

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permitted. She said that the staff is recommending approval of this request, with those changes, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Ms. Plumlee thanked the staff for their diligent work on the proposed text amendment, but noted that she believed that there were still some principal uses in the B-1 zone that might not be appropriate for neighborhood-oriented businesses, including: research, development, or testing laboratories; radio and tv studios; and business colleges, technical or trade schools, or institutions. She added that she is not in favor of tattoo parlors.

Ms. Plumlee opined that it is important to consider how the B-1 uses could impact the rural B-1 areas, outside the Urban Service Area boundary. She was concerned that "establishments primarily engaged in agriculture sales and services," greenhouses, nurseries, and hatcheries are prohibited uses in the B-1 zone, since rural area B-1 locations would be ideal for those types of uses.

Ms. Wade stated, with regard to the uses to which Ms. Plumlee referred as possibly inappropriate for the B-1 zone, that the staff researched those uses and determined that deleting them might create a large number of non-conformities, so they attempted to avoid deleting uses whenever possible. With regard to rural B-1 sites, she said that the staff has been working on a text amendment for recreational uses in the agricultural zones, and they believe that it will address some of Ms. Plumlee's concerns. Ms. Wade noted that many of the existing rural B-1 sites are not large enough to accommodate a nursery or greenhouse; but, since those uses are permitted in the agricultural zones, they could locate on a parcel adjacent to a B-1 parcel. She added that the staff is not sure that it would be appropriate to permit those uses in the urban B-1 areas, which comprise nearly 90% of all of the B-1-zoned land in the County.

Mr. Owens stated that, at first, it seemed that agricultural sales and services would be appropriate in the B-1 zone, because of how well they would fit in the rural B-1 areas. However, he does not believe that that type of use would be appropriate in the urban B-1 areas. He added that the recreational ZOTA group did not discuss greenhouses and agricultural sales as part of that process, but he believed that it might be appropriate to address those uses as part of that text amendment. Mr. Owens added that he did agree with Ms. Plumlee's comment that laboratories and research centers might not be appropriate uses in the B-1 zone.

Ms. Roche-Phillips stated that requiring existing B-1 areas to adhere to a form-based code could result in "robbing them of their inherent character." She said that she believes that the B-1 zone is intended for smaller-scale business areas, and suggested that form-based code development might be more appropriate for the larger-scale, more intense B-2B zone.

With regard to the proposed additions to the permitted uses, Ms. Roche-Phillips stated that she did not agree that some of those uses would be appropriate in the rural B-1 areas, including brewpubs. She noted that a recent article in the *Lexington Herald-Leader* had indicated that the rural areas support a large number of jobs, and she did not believe the Planning Commission should allow "incremental uses to encroach on" a regional economic engine. Ms. Roche-Phillips added that she believed that the Commission should carefully consider the compatibility of the urban and rural areas, including the proposed changes to setbacks. She opined that, although the B-1 zone has needed revision for some time, the proposed text amendment might be too ambitious.

Mr. Berkley asked if someone who wished to locate an agricultural sales business in one of the agricultural zones would be forced to have the property rezoned in order to do so, since the recreational ZOTA would apply only to the agricultural zones. Ms. Wade answered that the agricultural zones are being reviewed for recreational uses, and, in some cases, some of the agricultural/recreational uses suggested might encourage related retail sales of some sort, such as selling pumpkins. Mr. Berkley asked if it would be more appropriate to make those types of retail sales a conditional use in the agricultural zones. Ms. Wade responded that that was possible.

Mr. Owens stated that, since there are B-1 zones located both within and outside of the Urban Service Area, some uses, such as greenhouses and agricultural sales, might not fit in both situations.

Mr. Berkley said that one recently approved project, The Apiary, is proposing to have a greenhouse in the B-1 zone. Ms. Wade answered that that property is actually zoned B-4, and she was unsure if it would actually be considered a greenhouse.

Mr. Cravens asked if the Form-Based Neighborhood Business Project would be optional, and if a developer could choose to meet the regular requirements of the B-1 zone instead. Ms. Wade responded that that was correct, and noted that the use of the Form-Based Neighborhood Business Project would be the only way that the 40,000 square-foot restriction could be exceeded. She added that the staff has had some discussions with the Kroger company with regard to their existing store on Euclid Avenue, which is zoned B-1. The only way that facility could be expanded would be via the form-based option, or if the property was rezoned. Mr. Cravens opined that the form-based option is a good tool for use in the Infill & Redevelopment Area, since those redevelopment projects often need require greater flexibility.

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Ms. Plumlee stated that, despite the proposed recreational ZOTA, she was still concerned about rural B-1 areas, since that ZOTA will address only the agricultural zones. Ms. Wade responded that the text of that ZOTA has not yet been drafted, since the summary report has not been filed. Mr. Saltee opined that, after attending many of the recreational ZOTA meetings, the first prohibited use currently listed in the B-1 zone might be a section that this future text amendment would address.

Mr. Owens asked if the proposed text amendment would permit buildings of 35 feet in height, without the existing stipulation that the third floor of the building must be residential. Ms. Wade said that that was correct, and noted that it was intended to provide more flexibility. Mr. Owens asked if the staff was proposing to delete Business Office & Residential Projects as a conditional use. Ms. Wade answered that the staff is proposing to delete that use, if the Commission chooses to add the Form-Based Neighborhood Business Project. With regard to the proposed change to parking requirements, Mr. Owens asked if it was necessary to maintain a minimum number of three parking spaces in areas where the requirement is one space for every two hundred square feet. He said that he would prefer to see the requirement for a minimum number of parking spaces eliminated, given the importance of limiting the amount of impervious surface on a property.

Audience Comment: Richard Murphy, attorney, stated that he had spoken to the Zoning Committee in August of 2012 on behalf of Collins Bowling Center, who had a plan approved to construct a miniature golf course in conjunction with their bowling facility. He said that the original staff report on this request recommended removing miniature golf as a permitted use in the B-1 zone, but, following the discussion with the Zoning Committee, the Committee decided to recommend that it be added back to the B-1 zone; and permitted indoors or outdoors. Mr. Murphy said that he had spoken with the staff prior to this hearing, and the staff was agreeable to removing the word "outdoor," since that was an oversight in the revised staff report.

Discussion: Mr. Owens asked, with regard to Ms. Wade's comment about the creation of non-conformities if some of the principal uses were removed from the B-1 zone, if the staff knew approximately how many such non-conforming uses would be created. Ms. Wade answered that the staff had not researched exactly how many non-conformities would be created.

Ms. Plumlee stated that she believed that the proposed text amendment needed additional "tweaking" prior to the Commission making a decision.

Ms. Blanton stated that she believed that it would be appropriate for the Commission to vote on this request today, with the knowledge that some of their concerns would be resolved with the drafting of the recreational ZOTA. Mr. Owens opined that that text amendment should address those issues, and it could be expected to be completed within the next four to six months.

Director Comments: Mr. King agreed with Mr. Owens' assessment, noting that the staff would have to wait for the final report from the committee prior to drafting their work into a specific text.

Mr. Berkley asked if the prohibited uses related to agricultural sales and greenhouses should be moved to conditional uses, until such time as the recreational ZOTA is completed. Mr. Owens responded that, since urban and rural B-1 areas must be considered, he believed that the proposed text should be left as it is at this time, and it will be addressed by the upcoming text amendment.

Motion: A motion was made by Mr. Cravens and seconded by Ms. Blanton to approve ZOTA 2012-9, for the reasons provided by staff, with the changes recommended by staff with regard to miniature golf courses

Discussion of Motion: Ms. Roche-Phillips stated that she did not believe that the Form-Based Neighborhood Business Project was appropriate for the B-1 zone, and she did not believe that this proposed text amendment should go forward without further revisions.

Mr. Cravens asked if the Form-Based Neighborhood Business Project had been part of the proposed text amendment from the outset. Ms. Wade answered that it had. Mr. Saltee added that the concept was presented to the Commission at one of their work sessions in 2012. Mr. Cravens stated that he believed that it was a good idea, and he supported it. Ms. Roche-Phillips stated that she supported the concept of form-based codes, but did not believe that the B-1 zone was the appropriate location for it. Ms. Wade noted that a task force was currently considering the creation of form-based codes for the downtown zones. Mr. King added that that task force elected not to pursue a form-based code, but rather a Design Excellence program with architectural guidelines, etc. Ms. Roche-Phillips asked if that program would be restricted to a particular district. Mr. King answered that phase one of the program would apply to all of the B-2 zones.

Action: Mr. Cravens' motion carried, 5-3 (Beatty, Brewer, and Penn absent; Owens, Plumlee, and Roche-Phillips opposed).

2. **ZOTA 2012-15: PARKING, PRIVATE WALKWAYS AND PAVED AREAS IN RESIDENTIAL ZONES** – petition for a Zoning Ordinance text amendment to modify the definition of “driveway, for single-family and two-family dwellings;” to create new definitions for “paved area” and “private walkway;” and to limit the size, material, and configuration of private walkways and driveways, in the front yard of single-family and two-family dwellings.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Copies of the proposed text are available upon request)*

The Zoning Committee Recommended: **Approval of the revised staff alternative text**, for the reasons provided by staff.

The Staff Recommends: **Approval of the Staff Alternative Text**, for the following reasons:

1. The proposed text amendment will enhance zoning compliance and enforcement by clarifying parking regulations and closing certain loopholes that were being used to circumvent the Zoning Ordinance requirements for maximum parking, landscaping and stormwater controls.
2. Adoption of the staff alternative text will further the intent of the Zoning Ordinance by clarifying certain design standards related to parking for single- and two-family homes, thereby reducing the potential for zoning violations.

Staff Presentation: Mr. Sallee presented the staff report, noting that the proposed text amendment was initiated by the Planning Commission. He added that Mr. Emmons had done at least one presentation for the Commission on this topic at a work session, outlining the proposed changes to the Zoning Ordinance.

Mr. Sallee noted that the Commission members' notebooks included the text recommended for approval by the Zoning Committee at their last meeting, and that the staff had prepared a PowerPoint presentation that included photographs depicting the types of issues that precipitated this request, to which he would be referring throughout the staff's presentation.

Mr. Sallee stated that some of the issues with which the staff has been dealing recently relate to the proximity of walkways and driveways in residential areas. The main concern is that, in close proximity, walkways and driveways can allow for vehicles to use those areas for parking. The first proposed addition to the Zoning Ordinance would require that an encroachment permit be obtained for any walkway located between the sidewalk and curb, which is also a requirement for driveway aprons. Also included in this proposed section of the Ordinance would be a new definition for “paved area,” to include permeable pavers or other hard surface material. Another new definition is also proposed for “walkway.” Referring to a photograph of a residence with a very wide driveway, which allows three vehicles to park in front of a single garage, Mr. Sallee said that a change is proposed to the definition of “driveway” to require that, outside of the defined Infill & Redevelopment Area, 24' would be the maximum allowable width for a driveway, to account for a two-car garage door. Inside the I/R Area, the maximum driveway width would remain 10', as it has been for a number of years. He noted that the situation depicted in the slide might have been requested for a front patio or walkway directly adjacent to the driveway. One of the main portions of the proposed text would require that walkways be designed in a way that a vehicle cannot drive on them, in order to prevent the use of those areas for parking spaces.

Mr. Sallee stated that a change is proposed to the R-3 and R-4 zones for single family residences and duplexes to require a 6' setback from the front lot line and/or side street lot line, and a 2' setback from the side and rear lot line for proposed driveways designed to accommodate more than one vehicle. The purpose of this change is to prevent the construction of circuitous driveways, intended to expand the amount of parking beyond the typical driveway. Referring to the same photograph as the previous proposed change, Mr. Sallee said that where “decorative rock” or a similar product is being driven on or used for parking, it shall be considered loose aggregate, and prohibited. He noted that loose aggregate and gravel are already prohibited in the same sections of the Ordinance; this change is intended to clarify that those materials are not to be used for walkways or vehicular parking.

Referring to a photograph of two residences, each with a “patio” area in front of the front porch, Mr. Sallee stated that language is proposed to clarify that, within the required front or side street side yard, private walkways must be restricted to 10% of the yard area. The intent of this proposed change is to prevent the construction of a space within a front yard that would allow enough space for a vehicle to perpendicular park there. The next proposed change would require that any private walkway be designed in such a way that a vehicle cannot drive on it, or use it as a parking space or vehicular use area.

Referring to a photograph of a residence with a car parked in a graveled area directly alongside it, Mr. Sallee said that many of these situations have developed incrementally, over a number of years, and the proposed modifications were intended to remedy that situation. Proposed language would also require that permits be obtained for private walkways, parking, loading, or unloading areas. Those permits will not be issued until they meet the requirements of various divisions of the LFUCG, including some review for storm drainage requirements.

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Mr. Sallee displayed several photographs of examples of walkways that would not be permitted under the proposed text amendment. He added that there is a new section of the Ordinance proposed for non-conformities, since some areas do not have off-street parking for residences. In the I/R Area, and where that is the case, where Council has established a permit parking program or Pedestrian-Oriented Business district, there would be no requirement for off-street parking. In addition, outside the Infill & Redevelopment Area, a change to the Ordinance is proposed to require that the driveway width not exceed 50% of the requirement; in addition, another 10% would be allowable for pedestrians to travel from the sidewalk to the front of the house.

Mr. Sallee stated that the Zoning Committee recommended approval of the Staff Alternative Text at their meeting on January 10th, and the staff is recommending approval as well, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Cravens asked if the 10' driveway width would apply when there was a house with a two-car garage. Mr. Sallee answered that it would apply in the Infill & Redevelopment Area. He added that, in most neighborhoods in the I/R Area, the garages are detached and in the rear yard; once the driveway passes the house, it can widen to equal the width of the garage. Mr. Sallee displayed a photograph of a residence that, if it were located in the I/R Area, would require a variance to the width of the driveway, since it was wider than 10'. Mr. Cravens asked what the requirement would be for a three-car garage outside the I/R Area. Mr. Sallee answered that the limit in that situation would be a 24' driveway width up to the building line; behind the building line, it could expand. He noted that, currently, the limit is 20'. Mr. Cravens asked if a variance would be required for a true three-car driveway, and Mr. Sallee answered affirmatively.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 8-0 (Beatty, Brewer, and Penn absent) to approve ZOTA 2012-15, for the reasons provided by staff.

VI. **COMMISSION ITEMS** – Mr. Owens said that he would like to note the retirement of Della Horton, a longtime Planning staff member, and that the Commission would like to wish her the best.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR FEBRUARY, 2013**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 7, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	February 7, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 14, 2013
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 21, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 27, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 28, 2013

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 3:35 p.m.

TLW/TM/CT/BJR/BS/src

* - Denotes date by which Commission must either approve or disapprove request.